

**LEGISLATIVE SERVICES AGENCY
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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FISCAL IMPACT STATEMENT

LS 7298
BILL NUMBER: SB 215

NOTE PREPARED: May 10, 2011
BILL AMENDED: Apr 29, 2011

SUBJECT: Forfeiture.

FIRST AUTHOR: Sen. Bray
FIRST SPONSOR: Rep. Foley

BILL STATUS: Enrolled

FUNDS AFFECTED: ___ GENERAL
 X DEDICATED
 FEDERAL

IMPACT: State & Local

Summary of Legislation: This bill has the following provisions:

- A. *New Accounts Created* – It requires counties to create an asset forfeiture account. It provides that, in a forfeiture proceeding, 1/3 of the proceeds may be provided to the prosecuting attorney or an attorney retained by the prosecuting attorney in a forfeiture action, unless the prosecuting attorney has declined a request from the State Police Department to transfer the forfeiture to federal jurisdiction, in which case 20% of the proceeds but no more than \$5,000 may be transferred to the prosecuting attorney. It provides that of the remaining proceeds, 15% shall be provided to the Common School Fund and 85% shall be distributed to an account for distribution to law enforcement agencies participating in the seizure as necessary law enforcement expenses.
- B. *County Legislative Body Oversight* – It specifies that money or the proceeds of seized property placed in a county asset forfeiture account may be disbursed only by action of the county legislative body under a claim submitted by a law enforcement agency or prosecuting attorney, and must be disbursed pursuant to an interlocal agreement, if applicable.
- C. *Retaining an Attorney for Asset Forfeitures* – It permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the Attorney General reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first \$10,000 of the amount of the proceeds or money obtained; (2) 25% of the part of the amount between \$10,000 and \$100,000; and (3) 20% of the part of the amount that is at least \$100,000; unless a court finds that the forfeiture action is unusually complex.
- D. *Other Forfeiture Provisions* – It requires a court to notify the Indiana Criminal Justice Institute of the amount and manner of a forfeiture distribution. It provides that a prosecuting attorney or deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not

receive a contingency fee.

Effective Date: July 1, 2011.

Explanation of State Expenditures:

Explanation of State Revenues: *Effect on the Common School Fund* – Under current law, any remaining money after reimbursing state or local law enforcement agency expenses is deposited into the Common School Fund. The bill will redirect greater portions of proceeds of money and property sales in asset seizures that are currently deposited into the Common School Fund to accounts for prosecuting attorneys or law enforcement agencies.

LSA found limited information on asset seizures to estimate what the revenue loss to the Common School Fund would be. As background, the State Auditor's data system reports that the Common School Fund received \$102,472 from controlled substance seizures in FY 2010. The amount retained by local law enforcement agencies was not known.

LSA used 13 forfeiture cases that were reported by the Wayne County Sheriff to the State Treasurer and the amount of money that was divided between the local law enforcement agencies and prosecuting attorney and the Common School Fund.

The following table shows the reported distributions for each case and what the distribution would be under this proposed formula.

Case Number	Current Law		Proposed Changes			Total Value of Asset
	Law Enforcement Costs	Common School Fund	Prosecuting Attorney	Common School Fund	Law Enforcement Agencies	
0712-MI-036	\$2,145	\$13,821	\$5,317	\$1,597	\$9,052	\$15,966
0806-MI-013	\$343	\$5,277	\$1,871	\$562	\$3,186	\$5,620
0908-MI-013	\$1,346	\$2,645	\$1,329	\$399	\$2,263	\$3,991
0806-MI-012	\$921	\$2,080	\$999	\$300	\$1,701	\$3,001
0610-MI-021	\$426	\$2,099	\$841	\$253	\$1,431	\$2,525
0704-MI-008	\$1,983	\$340	\$774	\$232	\$1,317	\$2,323
0606-MI-011	\$629	\$1,632	\$753	\$226	\$1,282	\$2,261
0804-MI-022	\$1,132	\$879	\$670	\$201	\$1,140	\$2,011
0612-MI-024	\$1,000	\$922	\$640	\$192	\$1,090	\$1,922
0811-MI-001	\$478	\$1,439	\$638	\$192	\$1,087	\$1,917
0811-MI-026	\$573	\$1,048	\$540	\$162	\$919	\$1,621
0704-MI-030	\$590	\$690	\$426	\$128	\$726	\$1,280
0611-MI-024	\$498	\$455	\$317	\$95	\$540	\$953
Totals	\$12,063	\$33,328	\$15,115	\$4,541	\$25,734	\$45,391

For these selected cases, the Common School Fund would receive 86% less than it did under previous law.

However, the costs of asset seizures would likely be better documented by prosecuting attorneys and local law enforcement agencies since these cases would now be reported to the Criminal Justice Institute.

Explanation of Local Expenditures:

Explanation of Local Revenues: See *State Explanation of State Revenues*.

State Agencies Affected: Office of the State Treasurer; Criminal Justice Institute

Local Agencies Affected: Local law enforcement agencies; Prosecuting attorneys.

Information Sources: Paul Ogden, Attorney at Law; Steve Johnson, Prosecuting Attorneys Council; State Treasurer; 2009 Indiana State Police Annual Report

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